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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: James M. KAIN

Serial No.: 09/871,199

Art Unit: 3636

Filed: May 31, 2001

Examiner: Joseph F. Edell

For: JUVENILE SEAT ARMREST

APPEAL BRIEF TRANSMITTAL

Honorable Assistant Commissioner
for Patents
Washington, D.C. 20231

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GROUP 3600

Sir:

Transmitted herewith for filing is a Resubmission of Brief including (1 original and 3 copies) per the Examiner's request of April 8, 2003.

It is respectfully requested that, if necessary to effect a timely response, this paper be considered as a Petition for an Extension of Time sufficient to effect a timely response and shortages in other fees, be charged, or any overpayment in fees be credited, to the Account of Barnes & Thornburg, Deposit Account No. 10-0435 (20341/67618).

Respectfully requested,

BARNES & THORNBURG

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE



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RESUBMISSION OF BRIEF

Honorable Assistant Commissioner for
Patents and Trademarks
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Sir:

In response to the Advisory Office Action of April 8, 2003 attached hereto is a Revised Brief wherein Section 7 has been revised to include the magic words deemed necessary by the Examiner.

1) Real Party in Interest:

This Application has been assigned to Cosco Management, Inc., a Delaware corporation and a subsidiary of Dorel Juvenile Group, a corporation of Massachusetts.

2) Related Appeals and Interferences:

Applicants know of no related appeals on interference.

3) Status of Claims:

The Application contains Claims 1-31.

Claims 1, 6-8, 10, 12 and 25 stand rejected as being anticipated by Muoio (U.S. Patent No. 2,792,054) under 35 U.S.C. §102(b).

Claims 2-3, 9, 11 and 27-29 stand rejected as being unpatentable over Muoio ('054) in view of Coutts (U.S. Patent No. 3,297,358) under 35 U.S.C. §103(a).

Claims 4-5, 30 and 31 stand rejected as being unpatentable over Muoio ('054) in view of Coutts (U.S. Patent No. 3,297,358) under 35 U.S.C. §103(a).

Claims 13-24 and 26 stand rejected as being unpatentable over Muoio ('054) in view of Coutts ('358) and in further view of Walker (U.S. Patent No. 3,279,848), under 35 U.S.C. §103(a).

4) Status of Amendments

An Amendment After Final Rejection was filed January 7, 2003 and was entered by way of the January 23, 2003, Office Action. Entry of the Amendment overcame the Final Rejection of Claims 1-5 under 35 U.S.C. §112.

5) Summary of the Invention

The invention relates to a Juvenile Vehicle Seat Assembly comprising a seat bottom 24 (see Figure 1) and a seat back 14. A cantilevered armrest 10 projects from outer ridges 16 and 18 of the seat back 14 and is bolted thereto by two bolt assemblies 88 and 89, (as shown in Figure 2). As can be seen in Figure 1, the seat ridges 16 and 18 project forwardly, and are somewhat rounded in cross-section facing the front to permit upper and lower wings 77 and 78 (see Figure 2) of the cantilevered armrest 10 to wrap around these edges, (as shown in Figure 4). The first fastener 88 is located at a position above the top surface 62 of the arm 10 and the second fastener 89 is located below the top edge surface 62 of the arm 10. The upper and lower wings 77 and 78 of the arm 10, define a support mount 12 for the cantilevered arm 10. The arm 10 has the shape of an inverted U, and has two inner panels 65 (see Figure 3), towards its outer free end 66 and an inner load support panel 67 which blocks movement of the arm 10 about pivot axis 85 of the upper fastener 88.

It can be thus seen that Applicant has provided a cantilevered arm 10, which has a free end 66 and which arm projects from a seat back and is supported at only one end to the seat back by fasteners 88 and 89.

6) Issues on Appeal

Whether Claims 1, 6-8, 10, 12 and 25 are anticipated by Muoio, U.S. Patent No. 2,792,054, under 35 U.S.C. §102(b).

Whether Claims 2-3, 9, 11 and 27-29 would be obvious over Muoio ('054) in view of Coutts, U.S. Patent No. 3,297,358, under 35 U.S.C. §103(a).

Whether Claims 4-5, 30 and 31 would be obvious over Muoio ('054) in view of Coutts, U.S. Patent No. 3,297,358, under 35 U.S.C. §103(a).

Whether Claims 13-24 and 26 would be obvious as unpatentable over Muoio ('054) in view of Coutts ('358) and in further view of Walker, U.S. Patent No. 3,279,848, under 35 U.S.C. §103(a).

7) Grouping of Claims

The claims of the group(s) do not stand or fall together. The Examiner's Grouping of the Claims is correct except that Claim 2 should be grouped separately from the rejection of Claims 2-3, 9, 11 and 27-29, since Claims 3, 9, 11 and 27-29 require the second fastener to be below the arm, whereas Claim 2 only requires it to be below the first fastener and thus Claims 3, 9, 11 and 27-29 are separately patentable. Also Claims 13-14, 17 and 26 should be grouped differently from Claims 15-16 and 18-24, since these claims require the load support panel to be in a fixed position relative to the arm whereas Claims 15-16 and 18-24 do not and thus these claims are separately patentable.

8) Copy of the Claims

A copy of the Claims on appeal appear in the attached Appendix.

9) Argument

The patent to Muoio ('054) shows "a U-shaped seat support rod 28 with a right angle bend 29 in each side leg thereof..." (col. 2, lines 4-6), and also requires that the U-shaped seat support extend underneath the seat and is attached thereto by the side flanges 52 which have a plurality of notches 53 near the forward end thereof to receive the U-shaped seat support rod 28 therein (col. 2, lines 52-56). It is thus clear that Muoio ('054) does not provide for a cantilevered arm rest projecting from the back seat, with the cantilevered arm rest including an arm having a free end, a top surface and a support mount appended to the arm and coupled to the seat back to support the arm in a cantilevered position. In this regard, the honorable Board's attention is addressed to the dictionary definition of "cantilever", which was discussed at the interview's held with the Examiner, and which is appended to the Amendment filed January 7, 2003, which states that "Cantilever: A projecting beam or member supported at only one end". First, Muoio's arm structure 28 has but two ends: one at 30 (on the left side of the frame) and one at 30 (on the right side of the frame); thus, it has no free end, as claimed. Further, having both ends supported, it is not a cantilevered beam. The claims reference a cantilevered arm and reference a free end. In Muoio there is no free end. Further, the slots 53 act as a support, and thus, not only does Muoio not have a free end, its arm is also supported at its mid-section at the point that goes under the seat by the slots 53 as well as at both arm ends. It is quite clear that the Examiner is completely in error when he states that Muoio provides for a cantilevered arm, as is referenced in each of the independent claims in this case. A cantilevered arm must be supported at only one end. It must have a free end that projects from the support. Under no circumstances could one ever glean a cantilevered arm in Muoio. As the Examiner is relying on Muoio for the cantilevered arm feature

of all the claims and since the Examiner's position is completely wrong, as concerns what a cantilevered arm is, this honorable Board can resolve all the issues in the case by clearly indicating to the Examiner that Muoio does not have the cantilevered arm and the Board need not consider any of the following arguments presented hereinafter.

In view of the above, the rejections of Claims 1, 6-8, 10, 12 and 25 as being anticipated by Muoio ('054) under 35 U.S.C. §102(b), is clearly in error, and should be summarily reversed.

As concerns the rejection of Claims 2-3, 9, 11 and 27-29, the Examiner also relies on the teaching of Coutts ('358) for showing a lower wing with a second fastener (Figure 3), and proffers that it would be obvious to use a lower wing with a second fastener on Muoio. It is true that Coutts ('358) shows two fasteners to mount his U-shaped arm rest to the back (note also that, again, the U-shaped arm rest 25 of Coutts ('358) is not a cantilevered arm, as it has no free end and is not mounted solely at one end and projecting therefrom). As indicated *supra*, under Grouping of Claims, all of the Claims 3, 9, 11 and 27-29 require that the second support be below the arm. Claim 2 does not so require. As concerns the other Claims 3, 9, 11 and 27-29, Coutts ('358) does not provide a teaching for the second fastener to be below the arm, and hence, reversal of this rejection as concerns Claims 3, 9, 11 and 27-29 is proper, since there is no teaching to place the second support below the arm and, since the prior art reference to Muoio does not provide for the claimed cantilevered arm, as pointed out above. A placement of the second support is only taught by Applicant and use of Applicant's teaching to support an obviousness rejection is but an impermissible "hindsight" rejection, which cannot be affirmed.

Claims 4-5 and 30-31 were also rejected as being unpatentable over Muoio ('054) and Coutts ('358). The Examiner maintains that the particular type of fastener as claimed in these claims would involve a mere change in fastener type and that a change in length and fastener types is generally recognized as being within the level of ordinary skill in the art. In Claim 4, the limitations regarding fastener length is more than just "short" or "long", it is a relative length between two fasteners, a feature which the Examiner has not shown to be obvious skilled in the art (note, the same limitation appears in Claim 31). It is only the Applicant that teaches the desirability to have one fastener longer than the other. Further, to apply such a teaching to the disclosure of Coutts ('358) or Muoio ('054) would not be realistic, since there is no widening of a support area that would occasion a longer fastener. It is only because of the widened area of securement that the difference in fastener lengths is necessary. Accordingly, since Muoio ('054) does not provide for the cantilevered arm rest, as explained *supra* and, since the differences in lengths of the fasteners in Claims 4 and 31 is but a "hindsight" choice made by the Examiner after viewing Applicant's disclosure, reversal of this rejection is required.

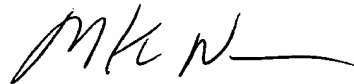
The Examiner has rejected Claims 13-24 and 26 as being unpatentable over Muoio ('054) in view of Coutts ('358), for substantially the same reasons as applied to Claims 2-3, 9, 11 and 27-29 in further view of Walker (3,279,848). Walker was applied to show "a load support panel 49 (Figure 1) to block pivotable movement of the arm rest". Walker ('848) shows the pair of oppositely spaced supports 49 to be "affixed to the periphery of the back rest 13..." (col. 2, lines 21-27). Claims 13-14, 17 and 26 all recite that "the load support panel is arranged to lie in a fixed position relative to the arm". In Walker ('848), the arm can move relative to the support panel and, therefore, there is no teaching to provide the anti-rotation force element on the arm in a fixed manner, as claimed. For this reason and for the reason expressed above that Muoio does not provide for the claimed cantilevered arm, this honorable Board should reverse this Rejection.

SUMMARY

Since the applied prior art does not provide for the claimed cantilevered arm, the Examiner's rejection is improper and should be summarily reversed by the Board and such is promptly requested.

Respectfully submitted,

BARNES & THORNBURG



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